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3:05-CV-02387 PATERSON V. WAL-MART STORES INC

1

TRANCS.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION DISTRICT COURTCLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SANDRA PATERSON,

Plaintiff,

vs.

WAL-MART STORES INC.,

Defendant.

SOM DEPUTY

CV 2387 L

No. 05-1049-CV-W-SOW

ORDERAJB
ECF

DOCUMENT

I hereby attest and certify this is a certified copy of a document which was electronically filed with the United States District Court for the Western District of Missouri.

Date Filed: 12/5/2005

PL. PRUNE, CLERK

Selene Bland
Deputy Clerk

Pending before the Court is Defendant Wal-Mart Stores, Inc.'s Motion to Stay (Doc. # 9)

and Defendant Wal-Mart Stores, Inc.'s Motion to Transfer (Doc. # 5). For the reasons stated below, defendant's motion to stay is dismissed as moot and defendant's motion to transfer is granted.

On June 30, 2005 Metabolife International filed a Chapter 11 petition under Title 11 of the United States Code (Bankruptcy Code) in the United States Bankruptcy Court for the Southern District of California. The instant case was filed on August 26, 2005 in the Circuit Court of Jackson County, Missouri against Wal-Mart Stores, Inc. ("Wal-Mart"). Wal-Mart removed the case to this Court on October 28, 2005.

The plaintiff, Sandra Paterson, seeks monetary redress resulting from her alleged purchase, and use, of Metabolife 356, a product manufactured by Metabolife. Plaintiff has asserted claims of negligence and strict liability for product defect and failure to warn against Wal-Mart. Plaintiff further claims that the product allegedly purchased and consumed was marketed, promoted, distributed or sold by Wal-Mart. Defendant Wal-Mart informs the Court that because Metabolife manufactured the product in question, it has a contractual and equitable

obligation to defend, indemnify and hold Wal-Mart harmless from certain claims, including those asserted in this action and therefore the outcome of this action could have an effect on the estate being administered in bankruptcy.

On September 16, 2005, Metabolife filed a petition under 28 U.S.C. § 157(b)(5) for an order transferring approximately 162 personal injury or wrongful death actions pending against Metabolife and defendants, or other non-debtor defendants to the United States District Court for the Southern District of California. A hearing was held on that motion on October 24, 2005. On November 18, 2005, the Honorable Irma E. Gonzalez granted the petition. Judge Gonzalez has ordered the immediate transfer of all personal injury or wrongful death Metabolife ephedra actions pending in jurisdictions across the country to the Southern District of California.

Wal-Mart now seeks transfer of this case to the United States District Court for the Southern District of California based on 28 U.S.C. § 1404(a). This provision provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). The purpose of Section 1404(a) is to avoid the waste of time, energy, and money to safeguard litigants, witnesses and the public against inconvenience and expense. See Insured Accounts Co. Inc. v. Am. Modern Home Ins. Co., 1988 U.S. Dist. LEXIS 10282, *7 (W.D. Mo. Sept. 14, 1988). “The moving party has the burden of proving that the transfer will be to a more convenient forum.” Id. at *2. The party seeking transfer must show that: (1) venue is proper in both the transferor and the transferee Court; (2) transfer is for the convenience of the parties and witnesses and; (3) transfer is in the interest of justice. See Terra Intl. v. Miss. Chem. Corp., 119 F.3d 688, 696 (8th Cir. 1997).

In this case, the Court finds that transfer to the Southern District of California is warranted. First, venue is proper in the Southern District of California because the case is "related to" the Metabolife bankruptcy proceeding pending in the Bankruptcy Court in that District. See 28 U.S.C. § 1409(a). Although Metabolife is not a defendant, Wal-Mart will have a claim for indemnity under its agreement with Metabolife - a claim which could affect the administration of the estate and Metabolife's obligations as the debtor. Second, defendant Wal-Mart has demonstrated that transfer is for the convenience of the parties and witnesses. The majority of documentation and well as the witnesses in this case would be at the Metabolife headquarters in California or in the Metabolife document depository in Southern California. Finally, transfer is in the interest of justice. Approximately 162 state court actions across the United States concerning the Metabolife product are the subject of removal or transfer motions to the Southern District of California. The transfer of this case will contribute to efficient and consistent outcomes. Accordingly, this Court finds that venue in the Southern District of California is appropriate.

Along with the present motion to transfer, Wal-Mart filed a motion to stay all proceedings in this Court pending this Court's decision whether to grant Wal-Mart's motion to transfer. Since this Court has decided to grant Wal-Mart's motion to transfer, its motion to stay proceedings in this case pending transfer is dismissed as moot.

Accordingly, it is hereby

ORDERED that scheduling teleconference set for December 15, 2005, in this court is cancelled. It is further

ORDERED that Defendant Wal-Mart Stores, Inc.'s Motion to Stay (Doc. # 9) is

dismissed as moot. It is further

ORDERED that Defendant Wal-Mart Stores, Inc.'s Motion to Transfer (Doc. # 5) is granted. This case is transferred to the United States District Court for the Southern District of California for all further proceedings.

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: 12-5-05

CLOSED, EAPADMIN

**U.S. District Court
Western District of Missouri (Kansas City)
CIVIL DOCKET FOR CASE #: 4:05-cv-01049-SOW**

Paterson v. Wal-Mart Stores Inc
Assigned to: District Judge Scott O. Wright
Demand: \$75,000
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 10/27/2005
Jury Demand: Defendant
Nature of Suit: 365 Personal Inj. Prod. Liability
Jurisdiction: Diversity

Plaintiff

Sandra Paterson

represented by **Bradley D. Kuhlman**
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I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the Western District of Missouri.

Date Filed: 12/27/05

P.L. BRUNE, CLERK

By: Melanie Board, Deputy Clerk

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V.

Defendant**Wal-Mart Stores Inc**

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Date Filed	#	Docket Text
10/27/2005	<u>•1</u>	NOTICE OF REMOVAL by Wal-Mart Stores Inc, Wal-Mart Stores Inc from Circuit Court of Jackson County, case number 0516-cv23765. (Filing fee \$ 250 receipt number 1118007) filed by Mark C Hegarty on behalf of Wal-Mart Stores Inc, Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Hegarty, Mark) (Entered: 10/27/2005)
10/27/2005	<u>•2</u>	DISCLOSURE OF CORPORATE INTERESTS of Defendant Wal-Mart Stores, Inc. filed by Mark C Hegarty on behalf of Defendant Wal-Mart Stores Inc.(Hegarty, Mark) (Entered: 10/27/2005)
10/27/2005	<u>•3</u>	ANSWER to Complaint with Jury Demand filed by Mark C Hegarty on behalf of Defendant Wal-Mart Stores Inc.(Hegarty, Mark) (Entered: 10/27/2005)
10/28/2005	<u>•4</u>	Notice of EAP ADMINISTRATOR assignment. (Attachments: # <u>1</u> General Order)(Carr, Lori) (Entered: 10/28/2005)
11/04/2005	<u>•5</u>	MOTION to reassign/transfer case filed by Sarah Elizabeth West on behalf of Wal-Mart Stores Inc Suggestions in opposition/response due by 11/21/2005 unless otherwise directed by the court (West, Sarah) (Entered: 11/04/2005)
11/04/2005	<u>•6</u>	SUGGESTIONS in support re <u>5</u> MOTION to reassign/transfer case filed by Sarah Elizabeth West on behalf of Defendant Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u>)(Related document(s) <u>5</u>) (West, Sarah) (Entered: 11/04/2005)

11/08/2005	<u>•7</u>	NOTICE of filing by Wal-Mart Stores Inc re <u>5</u> MOTION to reassign/transfer case <i>Notice of Order in Further Support of Defendant Wal-Mart Stores, Inc's Motion to Transfer</i> (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C)(Hegarty, Mark) (Entered: 11/08/2005)
11/15/2005	<u>•8</u>	SUGGESTIONS in opposition re <u>5</u> MOTION to reassign/transfer case filed by Chad Cameron Lucas on behalf of Plaintiff Sandra Paterson. Reply suggestions due by 11/30/2005 unless otherwise directed by the court (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>5</u>) (Lucas, Chad) (Entered: 11/15/2005)
11/15/2005	<u>•9</u>	MOTION to stay filed by Sarah Elizabeth West on behalf of Wal-Mart Stores Inc Suggestions in opposition/response due by 11/30/2005 unless otherwise directed by the court (West, Sarah) (Entered: 11/15/2005)
11/15/2005	<u>•10</u>	SUGGESTIONS in support re <u>9</u> MOTION to stay filed by Sarah Elizabeth West on behalf of Defendant Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A# <u>(2)</u> Exhibit B)(Related document(s) <u>9</u>) (West, Sarah) Modified on 11/16/2005 to Delete Ex. B (proposed order), which was attached in error (Beard, Melanie). (Entered: 11/15/2005)
11/21/2005	<u>•11</u>	RESPONSE to motion re <u>9</u> MOTION to stay filed by Chad Cameron Lucas on behalf of Plaintiff Sandra Paterson. Reply suggestions due by 12/6/2005 unless otherwise directed by the court (Related document(s) <u>9</u>) (Lucas, Chad) (Entered: 11/21/2005)
11/22/2005	<u>•12</u>	ORDER setting sched. t/c for 12/15/05 beginning at 9:30 a.m. Signed by Judge Scott O. Wright on 11-22-05. (Morse, Judy) (Entered: 11/22/2005)
11/30/2005	<u>•13</u>	REPLY SUGGESTIONS to motion re <u>5</u> MOTION to reassign/transfer case filed by Sarah Elizabeth West on behalf of Defendant Wal-Mart Stores Inc. (Attachments: # <u>1</u> Exhibit A)(Related document(s) <u>5</u>) (West, Sarah) (Entered: 11/30/2005)
12/01/2005	<u>•14</u>	REPLY SUGGESTIONS to motion re <u>9</u> MOTION to stay filed by Mark C Hegarty on behalf of Defendant Wal-Mart Stores Inc. (Related document(s) <u>9</u>) (Hegarty, Mark) (Entered: 12/01/2005)
12/05/2005	<u>•15</u>	ORDER cancelling 12/15/05 sched. t/c in this court; granting <u>5</u> defendant's motion to transfer case to Southern District of California, dismissing as moot <u>9</u> defendant's motion to stay. Signed by Judge Scott O. Wright on 12-5-05. (Morse, Judy) (Entered: 12/05/2005)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
OFFICE OF THE CLERK

Patricia L. Brune
Clerk of Court

Reply To:
 400 E. 9th Street
Kansas City, MO 64106
 131 West High Street
Jefferson City, MO 65101
 222 John Q. Hammons Pkwy.
Springfield, MO 65806

December 27, 2005

United States District Court
Southern District of California
880 Front, Ste. 4290
San Francisco, CA 92101-8900

'05CV 2387 L

AJB

Re: Transfer of our Civil Case No. 05-1049-CV-W-SOW
Paterson v. Wal-Mart Stores Inc

Dear Clerk:

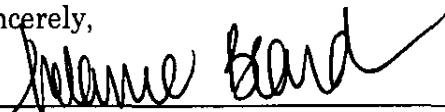
On 12/05/05, this Court signed an order transferring the above-entitled case to your court. Pursuant to our Administrative Directive No. 11, we delayed the transfer of this case for twenty-one (21) days. The case is now ready for transfer and you will find enclosed a certified copy of the transfer order.

Our court is a prototype court for electronic case filing. What that means is that we no longer have paper files and our "official court file" is on our electronic case filing web site. The attorneys and court users file their documents electronically via the internet in accordance with our "General Order" and "Procedures Manual" which is posted on the same web site.

You may access our electronic case file at the following web address: <http://ecf.mowd.uscourts.gov>. We have assigned a login and password for district courts to use in accessing this information. The login is "guestcrt" and the password is "guestcrt". This login and password should not be shared with anyone other than federal court personnel who would have a need to access our electronic case file system. You will need Adobe Acrobat reader loaded on your computer in order to view the documents.

In order to assist you in accessing our electronic file, we have prepared and attach to this letter a step-by-step guide to getting to our web site and accessing the electronic case file that is being transferred. If you need assistance, you may call the Kansas City office at 816/512-5000, the Jefferson City office at 573/636-4015 or the Springfield office at 417/865-3869.

Sincerely,



Diane Bland
Deputy Clerk

enc.

